IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4828 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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PATEL HATIBEN VENABHAI & ANR. - Petitioner(s)

Versus

PATEL KARSANBHAI SUKHABHAI & ORS. - Respondent(s)

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Appearance :
Shri Harin P. Raval for Petitioner(s) : 1 – 2.
None for Respondent No.2 though served.
Shri Dipen Desai, AGP for Respondent Nos. 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/05/2007

ORAL JUDGMENT

By this Writ Application, the petitioners seek to challenge the order dated 14th June, 1996 in Review Application No.

TEN.C.A.21/95 (Annexure-F) passed by the Gujarat Revenue Tribunal.

2. The short facts necessary for disposal of the present Writ Application are that respondent No.1, Patel Karsanbhai Sukhabhai, filed an application before the learned Mamlatdar-cum-Agricultural Lands Tribunal, Himmatnagar, submitting, *inter alia,* that he was cultivating the land of Survey No.73 admeasuring 1 Acre - 17 Gunthas of Village : Kamalpur and land of Survey No.81/1 admeasuring 34 Gunthas only of Village: Sadoliya; therefore, his names be recorded. The present petitioners, who were made parties to the said application, opposed the application, submitting, *inter alia*, that the land of Survey No.73 was mortgaged with the present respondent, Karsanbhai, therefore, under the law, Karsanbhai could not acquire the tenancy rights. For the land of Survey No.81/1, it was submitted that Karsanbhai, respondent No.1, could not acquire the tenancy rights being nephew of the last holder Joitaram. The Mamlatdar, *vide* his order dated 19th February, 1990, passed in Case No.32-O/1628/89/Sadoliya, holding that the present petitioners could prove their case accordingly rejected the application. Patel Karsanbhai Sukhabhai filed a tenancy appeal under Section 74 of the Bombay Tenancy and Agricultural Lands Act, 1949 ("the Tenancy Act" for short) as Appeal No.21/1990, but, the same came to be dismissed by the Deputy Collector, *vide* his order dated 27th August, 1990; he confirmed the findings recorded by the Mamlatdar-cum-ALT that the lands were mortgaged, the mortgage was redeemed therefor and the original applicant/respondent No.1 being nephew of the last holder could not acquire any tenancy rights over the land. The said findings of facts were confirmed by the learned Member, Gujarat Revenue Tribunal in Revision Application No. TEN.B.A.646/90 *vide* his order dated 13th February, 1995. After considering the complete records, specially that in the earlier inquiry made under Section 32G of the Tenancy Act, the

competent authority recorded a finding that Joitaram and Karsanbhai were uncle and nephew. He also held that the mortgage deed was available at page 57, from which it was clear that Survey No.73 was mortgaged with Karsanbhai, the same was redeemed in the year 1970 and that there was an endorsement at the foot of the said mortgage deed that the mortgage was redeemed. Relying upon Section 4(a) of the Act, it was held that the mortgagee in possession or the nephew could not acquire the tenancy rights. The Tribunal, accordingly, dismissed the revision. The respondent No.1 thereafter filed an application for review. The review application came to be dismissed in default, but, was restored *vide* order dated 7th March, 1996 passed upon Restoration Application No. TEN.B.A.1/96. After restoring the matter, the parties were heard in Review Application No. TEN.C.A.21/95.

The learned Member, Gujarat Revenue Tribunal, *vide* his order dated 14th June, 1996, allowed the revision, set aside all the orders passed earlier and remanded the matter back to the Mamlatdar-cum-ALT, Himmatnagar for deciding the matter afresh. Being aggrieved by the order dated 14th June, 1996 passed in the Review Application, the petitioners are before this Court.

3. Shri Harin P. Raval, learned Counsel for the petitioners, submits that the scope of review under Section 17 of the Bombay Revenue Tribunal Act, 1957 is not equivalent to the scope, as available to an authority under its original jurisdiction. He submits that while deciding the review application, the authority is required to exercise its discretion with caution and such authority would not be allowed to unsettle the findings, which have already been recorded. According to him, if there appears to be a mistake apparent on the face of the records or certain documents or evidence could not be brought earlier, which if

are produced, would have a material bearing on the judgement or if the Court finds that the matter requires to be taken under review, only then, such authority would be entitled to exercise its powers of review. Referring to the merits of the matter, it is submitted that the learned Member erred in misreading the documents, it ignored the mortgage deed and even the findings recorded in the inquiry made under Section 32-G of the Tenancy Act. He submits that the authority under the law was not entitled to record fresh finding of facts simply on the ground that yet another view was possible and the earlier view, therefore, would be wrong.

4. In the earlier order dated 13th February, 2005, the learned Member of the Gujarat Revenue Tribunal had referred to the mortgage deed available at page 57, wherein it was clearly shown that Survey No.73 was mortgaged with respondent No.1 – Karsanbhai and at the foot of the mortgage deed, there was an endorsement speaking that the mortgage was redeemed in the year 1970. This was a pure finding of fact. The learned Member had interfered with the said finding, observing that on the record, there was no documentary evidence nor any revenue record was produced to prove that the land was held by respondent No.1 as a mortgagee. The learned Member unfortunately misread the evidence, ignored the documents, which were available on the records, and thereafter, recorded a perverse finding. Such finding even otherwise was not permissible to be recorded. In a given case, if the oral evidence was brought on the record to prove that the property was mortgaged, the mortgage was redeemed and the possession was taken back and on such evidence, the Court records a finding, then too, the finding would be a finding of fact. Appropriateness of the evidence would not be a ground to set aside a finding if some evidence to support the finding is available in the records.

5. The learned Member, while granting the review, erred in holding that it was not proved by any evidence, documentary or oral, that Karsanbhai happened to be the member of the family of Joitaram, being his nephew. Unfortunately, while recording this finding, the learned Member failed in taking into consideration the findings recorded in the inquiry made under Section 32-G of the Tenancy Act. If both the findings were reversed by the Reviewing Court or Authority after misreading the evidence or by ignoring the evidence or contrary to the settled principles of law, then, such order of review would be amenable to the writ jurisdiction.

6. Taking into consideration that the learned Member misread the evidence, ignored the legal provisions, ignored to look into the documents and allowed the review application simply on the ground that yet another view is possible, I hold that the learned member of the Gujarat Revenue Tribunal was not entitled to interfere in the matter. In view of the judgement of the Supreme Court in the case of ***Devarju Pillai vs. Sellayya Pillai***, [***AIR 1987 SC 1160***], the order dated 14th June, 1996 passed in Review Application No. TEN.C.A.21/95 deserves to and is, accordingly, quashed and set aside. The order dated 13th February, 1995 passed in Revision Application No.TEN.B.A.646/90 is restored back.

7. The petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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